IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 2866 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINSINH KHENGARSINH JHALA

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR ST MEHTA APP for Respondent No. 1

MS MEGHA JANI for Respondent No. 2

NOTICE SERVED for Respondent No. 3, 4, 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/09/2000

ORAL JUDGEMENT

This revision application under Section 397 read

with 401 CrPC arises of the judgment and order dated 9th August, 1995 passed by the learned Second Extra Assistant Judge, Banaskantha in Criminal Revision Application No. 138 of 1994.

The respondent no. 2 herein is the complainant in Criminal Case No. M-27 of 1994. It was alleged that the complainant had purchased muddamal truck bearing registration no. GRW 1857 for a sum of Rs. 1,69,000/= from the accused no. 3 Dineshbhai Sardarbhai through the intervention of one RTO Agent Shri Moghajibhai Becharbhai Patel, the accused No. 1 and the financier Rajnikant Vrajlal Parikh, the accused no. 2. The complainant had paid a sum of Rs. 1,00,000/= on 8th June, 1993 towards the price of the muddamal truck and the possession was delivered to the complainant by the accused no. 3 on 8th June, 1993. The remaining amount of Rs. 69,000/= was paid to the accused no. 3 in several instalments from 20th September, 1993 to 9th March, 1994. During the said period, the truck remained in possession of the complainant and he was plying the same for collecting milk on behalf of Banas Dairy. Since the purchase of the said truck, the complainant had also purchased route no. 6 for collection of milk on behalf of Banas Dairy and had paid Rs. 21,000/= by way of deposit. However, in the month of June, 1994, the accused forcibly took the possession of the truck from Raimalji Desai who was plying the truck on behalf of the complainant. Therefore, the complaint.

Pursuant to the said complaint, and the order made by the learned Magistrate, the muddamal truck was recovered from the present petitioner Pravinsinh Khengarsinh Jhala. The complainant made an application Exh. 1 claiming possession of the muddamal truck, pending trial. While the petitioner made an application Exh. 5 for possession of the muddamal truck, pending trial. The learned Chief Judicial Magistrate, Palanpur by his order dated 24th November, 1994 rejected the Application Exh. 1 and allowed the application Exh. 5. The learned Magistrate directed that pending trial, the muddamal truck be handed over to the petitioner on conditions mentioned therein. Feeling aggrieved, the complainant preferred the above referred Criminal Revision Application No. 138 of 1994. The said revision application has been allowed by the learned Second Extra Assistant Judge, Banaskantha by his judgment and order dated 9th August, 1995. The learned Asstt. Judge has directed that pending the trial, the possession of the muddamal truck be handed over to the complainant who was in lawful possession of the truck, on conditions

mentioned therein. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Raval has submitted that the muddamal truck was initially purchased by the accused no. 3 Dineshbhai Sardarbhai and was financed by one Maruti Finance Company. The muddamal truck was hypothecated to said Maruti Finance Company and an entry to that effect had also been made in the RTO records. The petitioner had purchased the muddamal truck from the accused no. 3 Dineshbhai and the entry to that effect has been made in the RTO records in the month of June, 1994. The petitioner is thus a lawful purchaser for value from the registered owner and the petitioner is now the registered owner of the muddamal truck. The petitioner had received the possession of the muddamal truck in lawful manner and the petitioner was thus in lawful possession of the muddamal truck. The muddamal truck should, therefore be returned to the petitioner, pending trial. He has submitted that the record nowhere indicates payment of Rs. 1,69,000/= alleged to have been made by the complainant to the accused no. 3 from whom the complainant is alleged to have purchased the muddamal truck. No receipts for the payment of the said sum have been produced by the complainant nor the possession receipt has come forth. In absence of any records showing the lawful possession of the complainant of the muddamal truck, the muddamal truck could not have been handed over to the complainant, pending trial. He has submitted that all the fuel receipts, spare parts receipts and the expenses on repairs, which are alleged to have been made by the complainant do not evidence either the ownership or the possession of the complainant of the muddamal truck. As against that, the petitioner has produced RTO records to evidence his lawful ownership andthe possession of the muddamal truck. Mr. Raval has relied upon the judgments of this Court in the matters of THAKAR MAHENDRAPRASAD BAPALAL & ANR VS THE STATE OF GUJARAT & ANR. [1985 GLH 61]; SHAMBHUPRASAD CHHOTALAL RAVAL VS MADHSUDAN GIRDHARLAL ACHARYA & ANR. [25 (2) GLR 907]; NANDIRAM PARUMAL VS STATE OF GUJARAT & ORS. [7 GLR 866] and of the Hon'ble Supreme Court in the matter of MANIPAL FINANCE CORPN. LTD VS T.BANGARAPPA & ANR. [1994 Suppl. (1) SCC 507]. He has also relied upon the affidavit made by one Rajan Kumar S. Padhya, the constituted Attorney of the petitioner. He has submitted that the possession of the muddamal truck has been handed over to the complainant on the conditions mentioned in the order dated 9th August, 1995. The complainant has committed breach of the said terms. The complainant has not paid the taxes due and payable on the said muddamal

truck. Besides, the complainant has also transferred the possession of the muddamal truck in favour of one Nazirbhai Qureshi of Dhanera, therefore also, the muddamal truck should not be continued to remain in the possession of the complainant, pending trial.

The application is contested by the complainant. Ms. Jani has submitted that the complainant had purchased the muddamal truck from the accused no. 3 for consideration and almost entire amount of the purchase price had been paid by the complainant. On payment of Rs. 1,00,000/= on 8th June, 1993, the possession of the muddamal truck was handed over to the complainant by the accused no. 3. Thus, the complainant was placed in lawful possession of the muddamal truck and the complainant could not have been dispossessed forcibly, as has been done by the accused no. 3. Therefore, pending trial, the possession of the muddamal truck has rightly been handed over to the complainant. The documents are the fuel bills, spare parts bills, the delivery memos for spare parts, etc. She has also relied upon the accounts produced by the complainant. She has submitted that these accounts were maintained by the complainant as regard the expenses incurred on the muddamal truck. The accounts also vouchsafe the payment of instalment money to the vendor-accused no. 3. She admits that entire purchase price has been paid by the complainant in cash and no receipts are obtained for such payment, except for the sum of Rs. 7,000/= which was paid on 4th January, 1994 to the wife of the accused no. 2-Financier. She has submitted that since the complainant was willingly put into possession of the muddamal truck, by the registered owner, the accused no. 3, the complainant had lawfully acquired the possession of the muddamal truck and the same cannot be taken away from his possession, except in accordance with law. Therefore, pending trial, the possession of the muddamal truck has rightly been delivered to the complainant.

In the matter of Thakar Mahendrabhai [Supra], the muddamal truck was ordered to be placed in the possession of the petitioner [in that case] who had been lawfully and voluntarily put into possession of the trucks by the complainant himself. In the matter of Khushaldas Vrajlal [Supra], this Court was considering the order made by the trial Court for production of the scooter in respect of which the offence was alleged to have been committed under Section 91 CrPC. The learned Judge held that the Magistrate had power to order disposal of the property which was lawfully produced before the Court and not by ordering the accused to produce it, which is legally not

permissible. In the matter of Nandiram @ Nandumal [Supra], this Court has held that, `when any property such as motor vehicle is attached or seized by the police, one has to consider the effect of the provisions of the Motor Vehicles Act for finding out the true claimant, before passing orders relating to such property during the pendency of the proceedings under Section 516 (A) of the CrPC. It would, ordinarily, be prudent to allow such motor vehicle to remain in possession of such person in whose name a certificate of registration stands. Possession by itself would not be a true criterion for the return of the same to the person from whom it has been seized or attached by the police in relation to case against him.'

On the facts of the present case, it prima facie, appears that the accused no. 3 Dinesh Sardarbhai was the registered owner of the muddamal truck at the relevant time. The petitioner has purchased the muddamal truck from said Dinesh Sardarbhai for consideration and his name has also been entered into RTO records. He has also discharged the liability towards financier ie., Maruti Finance to whom the muddamal truck was hypothecated. Hence, on the date of seizure, the petitioner was the registered owner of the muddamal truck and was in lawful possession of the muddamal truck. It is well settled that ordinarily the possession of the muddamal vehicle, in respect of which the offence is alleged to have been committed, should be delivered to the registered owner, pending trial. However, in case where the complainant were found to be in lawful possession of the muddamal vehicle and were forcibly dispossessed, the possession of the muddamal vehicle should be delivered to the complainant from whose possession the muddamal vehicle has been found to be forcibly taken. The question is, whether in the present case the complainant has prima facie proved his lawful possession of the muddamal truck.

It is undoubtedly true that the complainant has produced receipts for the amount spent on the purchase of spare parts, memos for diesel, etc. in respect of the muddamal truck. But, in my view, those documents are not sufficient to hold that the complainant had purchased the muddamal truck from the accused no. 3 for consideration, as alleged. It would not be out of place to mention here that the accounts, on which reliance has been placed by Ms. Jani, has not recorded receipts by the complainant and the only record found is that of the expenditure incurred on the muddamal truck. Besides, no receipts have been issued for the alleged payment of Rs. 1,69,000/= made by the complainant to the accused no. 3.

No possession receipt, no agreement, no document like receipts for the payment or the possession receipt has been produced by the complainant nor there is any agreement for sale of the muddamal truck. No entry as regards the sale of the muddamal truck has been made in the RTO records either. The complaint is also silent as to how the possession of the muddamal truck was forcibly taken from the complainant or his son-in-law Raimalji; as alleged. In absence of such materials, it is not possible to hold, at this stage, that the complainant had purchased the muddamal truck from accused no. 3 for consideration and that the complainant was placed in lawful possession of the muddamal truck or that he was forcibly dispossessed by the accused no. 3, as alleged. In absence of such materials, the delivery of the muddamal truck is required to be handed over to its registered owner, pending the trial.

Ms. Jani has also relied upon the affidavits made by Raimalji Desai, Jabirbhai Shermahammad, who is said to be the driver of the muddamal truck, Farookbhai Shermahammad, the dealer in the spare parts and Somalal Modi, an employee at the Petrol Pump from where the complainant is stated to have purchased fuel. She has also stated that even on investigation, the police has found that the complainant owned a Jeep which he had sold for a sum of Rs. 1, 00,000/= and the said sum was appropriated for the purchase of the muddamal truck. I am of the view that these documents do not prima facie prove the purchase of the muddamal truck by the complainant for consideration. The complainant has nowhere stated where did he got the sum of Rs. 1,69,000/= which he paid in cash in consideration of the muddamal truck.

In view of the above discussion, the revision application is allowed. The judgment and order of the learned Second Extra Assistant Judge, Banaskantha dated 9th August, 1995 passed in Criminal Revision Application NO. 138 of 1994 is quashed and setaside. The judgment and order dated 24th November, 1994 of the learned Chief Judicial Magistrate below Application Exhs. 1 & 5 in Criminal Case No. M 27 of 1994 is restored. The complainant will produce the muddamal truck before the trial Court on 5th October, 2000. It is clarified that the observations made in this judgment are the prima facie view and shall not affect the trial in any manner. Rule is made absolute in the above terms. The registry is directed to return the records and proceedings to the trial Court immediately.

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Prakash*